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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

REPLY COMMENTS ON PETITIONS FOR RECONSIDERATION

GTE SERVICE CORPORATION
and its affiliated domestic telephone operating, wireless, and long distance companies

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September 3, 1997

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EXECUTIVE SUMMARY

The Commission is faced with a wide variety of oppositions to and comments on petitions for reconsideration of the *Universal Service Order*. The Commission can use this record to improve the *Order*, if it holds firm in promoting the universal service goals of the Telecommunications Act while rejecting attempts to undermine the provision of affordable local telephone service.

Most importantly, the Commission must reconsider its decision to require compensation for only 25 percent of carriers' universal service costs. The Commission will fail to meet its obligations under the Telecommunications Act if it takes responsibility to ensure that carriers are compensated for only a quarter of their universal service costs and simply trusts that the states will make up the difference. Congress carefully crafted a framework of federal and state universal service obligations, and stressed the urgency of the matter by setting deadlines in subsection 245(a). Thus, Congress called on the FCC to cooperate with the states to the extent possible, and called on the states to cooperate with the FCC; but the explicit mandate spelled out in the statute is that the FCC must assure overall compliance with section 254. The states' independent responsibility to ensure "specific, predictable and sufficient" support mechanisms does not diminish the FCC's role. The Commission should, therefore, revisit this decision and adopt a workable federal plan that takes complete responsibility for carrying out the directions of Congress on an urgent basis. This plan should make federal benefits available only for states that cooperate with the federal plan.

Additionally, the Commission should require that carriers recover their universal service contributions through an explicit end user surcharge given the overwhelming support for such a mechanism from a broad range of commenters. The Commission's current plan does not satisfy the Act's mandate that recovery mechanisms be "explicit and sufficient." By imposing mandatory end user surcharges, the Commission can take an important step to effectuating this mandate while also maintaining and improving competitive neutrality.

The Commission should not grant TelHawaii's Petition for exemption from the policy prohibiting transfer of exchanges for the purpose of increasing universal service support. The Hawaii Department of

Commerce and Consumer Affairs' arguments in support of that Petition are invalid and offer no new information for the Commission's consideration. The Hawaii PUC clearly relied on the availability of universal service funding in choosing TelHawaii over GTE to serve Ka'u. They expressly conditioned TelHawaii's authorization as an alternative telecommunications provider on its obtaining universal service funding promptly. Thus, although this proceeding lacks an adequate record on which to make a determination regarding the applicability of Paragraph 308 to the TelHawaii transaction, and the Common Carrier Bureau has recently declined to render such a ruling at this time, if the Commission nevertheless decides to resolve this issue, it should find that Paragraph 308 does apply.

Further, the Commission should utilize a competitive bidding mechanism in determining universal service funding. Contrary to AT&T 's assertions, such a system will control the overall size of the universal service fund and lead to efficient administration and delivery of support. Moreover, the Commission will be able to draw on the experiences of several other entities that have successfully implemented a competitive bidding system to ameliorate the Rural Telephone Coalition's concerns.

Finally, the Commission must clarify that a carrier is not eligible for universal service support unless it offers the defined universal service package on a stand alone basis at the state's established affordable rate, or offers a more extensive package at that same affordable rate. Without such a determination, service providers will "cherry-pick" high volume, high revenue customers and, thus, damage the goals of the universal service system. Such "bundling" schemes will eliminate the Commission's ability to guarantee that universal service funds support only universal services, as required by Section 254. In addition, uncontrolled bundling schemes will undermine any attempt to institute a competitive bidding system, which will rely on each participant maintaining an economically consistent universal service offering.

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REPLY COMMENTS ON PETITIONS FOR RECONSIDERATION

GTE Service Corporation and its affiliated domestic telephone operating,[1] wireless,[2] and long distance companies[3] (collectively "GTE") hereby submit their reply to various oppositions and comments on petitions for reconsideration in the above-referenced docket. As explained below, the Commission should carefully reconsider certain requests to modify its *Universal Service Order*[4] to ensure that its decision is consistent with the Telecommunications Act of 1996 ("Telecom Act"),[5] the will of Congress, and the public interest.

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1 GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

2 GTE Mobilnet Incorporated, Contel Cellular Inc., and GTE Airfone Incorporated.

3 GTE Card Services Incorporated.

4 *See* Federal-State Joint Board on Universal Service, FCC 97-157, CC Docket No. 96-45 (rel. May 8, 1997) (Report and Order) *("Universal Service Order");* Order on Reconsideration, FCC 97-246 (rel. July 10, 1997) ("*Reconsideration Order*"). On August 25, 1997 the Commission granted a page extension from ten to twenty pages for all parties in this docket. *Order,* Federal-State Joint Board on Universal Service, CC Doc. No. 96-45 (rel. Aug. 25, 1997). GTE has also filed an appeal of the *Universal Service Order.* GTE here discusses arguments related to the issues on appeal insofar as necessary to respond to the petitions for reconsideration presented, because it must protect its interests in the event the FCC were to act on those petitions before the court acts on GTE's petition for review.

5 Pub. L. No. 104-104, 110 Stat 56.

I. IN ESTABLISHING A MECHANISM TO COMPENSATE CARRIERS FOR ONLY 25 PERCENT OF UNIVERSAL SERVICE COSTS UNDER A PLAN APPLICABLE ONLY TO "INTERSTATE" SERVICE, THE COMMISSION FAILED TO CARRY OUT ITS OBLIGATIONS UNDER SECTION 254.

Six states (Alaska, Arkansas, Florida, Texas, Vermont and Wyoming) as well as other petitioners[6] ask the Commission to reconsider its decision to compensate carriers for only 25 percent of universal service costs.[7] Another state (Colorado)[8] and a number of other commenters support these requests.[9] GTE agrees with these parties and urges the FCC to address the *Universal Service Order's* grave failure to correctly identify at the outset the nature and extent of the agency's statutory mandate.

As stressed in the *Universal Service Order* itself, the FCC is obligated to see to it that the mandate of section 254 is carried out. Thus, the *Universal Service Order* states at paragraph 814 that: "[T]he Commission has the ultimate responsibility to effectuate section 254."[10] "Because state universal ervice mechanisms must be consistent and must not conflict with the federal mechanisms," the Commission finds it "reasonable to conclude that section 254 grants the Commission the primary

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[6] *See* Petition for Reconsideration and Request for Clarification of Alaska Public Utilities Commission, CC Doc. No. 96-45, at 5-9 (Jul. 15, 1997); Petition for Reconsideration by the Arkansas Public Service Commission, CC Doc. No. 96-45, at 1 (Jul. 16, 1997); Florida Public Service Commission's Petition for Clarification and Reconsideration, CC Doc. No. 96-45 at 7-9 (Jul. 16, 1997); Petition for Reconsideration by the Public Utility Commission of Texas, CC Doc. No. 96-45 at 1-3; (Jul. 15, 1997); Petition for Reconsideration and Clarification of the Vermont Public Service Board and the Vermont Department of Public Service, CC. Doc. No. 96-45 at 2-6 (Jul. 17, 1997); Petition for Reconsideration by the Wyoming Public Service Commission, CC. Doc. 96-45 at 2-4 (July 16, 1997); Petition for Reconsideration and Clarification of the Rural Telephone Coalition, CC Doc. No. 96-45 at 1-6 (Jul. 17, 1997) ("RTC Petition"); Petition for Reconsideration of the Rural Telephone Companies, CC Doc. No. 96-45 at 9-12 (July 17, 1997); Petition for Reconsideration and Request for Clarification of the Alaska Telephone Association, CC. Doc. No. 96-45 at 1-2 (Jul. 17, 1997); Petition for Reconsideration of Western Alliance, CC Doc. No. 96-45 at 18-21 (Jul. 17, 1997); Petition for Reconsideration and Clarification of U S West, Inc., CC. Doc. No. 96-45 at 2-9 (Jul. 17, 1997) ("US West Petition").

[7] *See Universal Service Order,* ¶ 223 (as phrased in paragraph 223 of the *Universal Service Order,* "federal support will be 25 percent of that amount [the difference between forward-looking economic cost and the nationwide revenue benchmark], corresponding to the percentage of interstate allocated loop costs.")

[8] *See* Comments in Support of Petitions for Reconsideration by the Colorado Public utilities Commission, CC Doc. No. 96-45 at 1-4 (Aug. 15, 1997).

[9] *See* Comments on and Oppositions to Petitions for Reconsideration of BellSouth, CC Doc. No. 96-45 at 1-3 (Aug. 18, 1997) Comments of TCA, Inc., CC Doc. No. 96-45 at 2-4 (Aug. 18, 1997), Comments of Virgin Islands Telephone Corporation on Petitions for Reconsideration, CC Doc. No. 96-45 at 2-6 (Aug. 18, 1997).

[10] *Universal Service Order* ¶ 814.

responsibility and authority to ensure that universal service mechanisms are `specific, predictable, and sufficient' to meet the statutory principle of `just, reasonable, and affordable rates.'"[11]

As confirmed in paragraph 816, the Commission is not precluded from continuing to work with the states to provide for universal service "so long as this partnership results in support mechanisms that comply with the mandates of section 254."[12] Thus, Congress called on the FCC to cooperate with the states to the extent possible, and called on the states to cooperate with the FCC; but the explicit mandate spelled out in the statute is that the FCC must assure overall compliance with section 254.

The Commission observes in paragraph 817 that this overall responsibility of the federal agency is not limited to matters involving interstate service for "the section 254 mandate covers both interstate and intrastate services and therefore it is also reasonable that the Commission, in ensuring that the overall amount of the universal support mechanisms is `specific, predictable, and sufficient,' may also mandate that contributions be based on carriers' provision of intrastate services."[13] And, paragraph 818 eliminates any doubt as to the FCC's responsibility: "[T]he statutory scheme of section 254 demonstrates that the Commission ultimately is responsible for ensuring sufficient support mechanisms."[14]

But, instead of adopting a plan to carry out the demanding assignment reflected in the foregoing, the FCC arbitrarily and without adequate explanation decides to take responsibility for only a small part of its congressionally assigned task. Thus, the agency states that: "[W]e decline to exercise the full extent of this authority out of respect for the states and the Joint Board's expertise in protecting universal service."[15] It further declares:

> [W]e decline to exercise the full extent of our authority. The decision to decline to exercise the entirety of our authority is intended to promote comity between the federal and state

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11 *Id.* ¶ 816 (footnote omitted, emphasis added).

12 *Id.*

13 *Id.* ¶ 817 (emphasis added). Similarly, *Universal Service Order* paragraph 813 states "that the Commission has jurisdiction to assess contributions for the universal service support mechanisms from intrastate as well as interstate revenues." Paragraph 823 adds: "[S]ection 254 blurs any perceived bright line between interstate and intrastate matters." *See generally Universal Service Order,* ¶¶ 201-05, 269-70, 801-35.

14 *Id.*,¶ 818 (footnote omitted, emphasis added).

15 *Id.*, ¶ 817.

governments and is based on our respect for the states' historical expertise in providing for universal service.[16]

Congress -- fully aware of the importance of comity and the states' historical expertise -- created in section 254 and related subsection 214(e) a careful balancing of responsibility and powers. Most particularly, the mechanism to which interstate telecommunications carriers must contribute on an equitable and nondiscriminatory basis under subsection 254(d) is to be "established by the Commission to preserve and advance universal service." This critical obligation to develop a workable mechanism that carries out the statutory objectives nationwide is thus placed by Congress squarely and exclusively on the appropriate federal agency.

Executing this specific obligation under subsection 254(d) is part of Congress' overall assignment to the FCC under subsection 254(b) in conjunction with the Joint Board, *i.e.*, basing policies for the preservation and advancement of universal service on the following sweeping principles, *not one of which is limited to interstate services*:[17] (1)assuring the availability of "[q]uality services ... at just, reasonable, and affordable rates"; (2) assuring access to advanced telecommunications and information services "in all regions of the Nation"; (3) assuring that consumers "in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable."; (4) assuring that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service"; and [5] assuring that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."

Achievement of the foregoing "principles" or objectives is assigned to the FCC in conjunction with the Joint Board. The principles include a double iteration of the phrase "in all regions of the Nation," which stresses Congress' intent that the FCC should give effect to these principles on a nationwide basis. The

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16 *Id.*, ¶ 807.

17 *See* 47 U.S.C. § 254(b)(1) - (5).

states are not excluded from this process; they are represented in subsection 254(b) in the form of the Joint Board; the inclusion of state mechanisms in subsection 254(b)(5) indicates that Congress expected and required active state cooperation; and, perhaps most importantly, they are obligated under subsection 254(f) to institute competitively neutral universal service systems. Thus, as phrased by *Universal Service Order* paragraph 816: "[T]he states are independently obligated to ensure that support mechanisms are 'specific, predictable, and sufficient' and that rates are 'just, reasonable, and affordable'...."[18]

However, this independent responsibility of the states does not diminish the overall obligation of the FCC, acting in conjunction with the Joint Board, for assuring achievement of all the subsection 254(b) principles. This includes in particular overall FCC responsibility for developing policies that ensure under subsection 254(b)(5) that there are "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."[19] By not limiting this clause to federal mechanisms, Congress assigned to the FCC the obligation to achieve the mandated outcome nationwide. This makes eminent sense because the problem of keeping the entire nation connected to nationwide communications necessarily involves assuring local connections. Indeed, this is the whole point of Section 254 as it is the whole point of 47 U.S.C. § 410.

The nationwide obligations of the FCC are reemphasized as we examine the careful assignment of powers and matching authority in specific provisions of section 254. Thus, in addition to its unique and critical role under subsection 254(d), discussed *supra*, the FCC in conjunction with the Joint Board may adopt additional principles under subsection 254(b)(7);[20] may make changes in the definition of "universal service" under subsections 254(c)(1) and (2); and may designate additional services under subsection 254(c)(3). The FCC must adopt regulations implementing section 254 as reflected in subsection 254(e);

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18 *Universal Service Order*, ¶ 816 (footnote omitted).

19 47 U.S.C. § 254(b)(5) (emphasis added). As stated in paragraph 815: "In ... prescribing that the support mechanisms be `sufficient,' *Congress obligated the Commission to ensure* that [they] satisfy section 254's goal of `preserving and advancing universal service,' consistent with the principles set forth in section 254(b), including the principle that quality services should be available at `just, reasonable and affordable rates.'" (footnote omitted, emphasis added).

20 Applauded by GTE and much of the industry, the FCC has exercised this power by adopting competitive neutrality as an additional principle. *See Universal Service Order*, ¶¶ 46-51.

and once that has occurred the states may not take inconsistent action under subsection 254(f). The FCC must adopt rules concerning interexchange rates in implementing subsection 254(g); must set up the prescribed programs for the benefit of schools and libraries under subsection 254(h); must "ensure that universal service is available at rates that are just, reasonable, and affordable" under subsection 254(i); and must adopt necessary cost allocation rules with regard to interstate service under subsection 254(k). This latter provision, together with subsection 254(h)(1)(B), represent the only times in section 254 that the language distinguishes the respective roles of state and federal commissions in terms of whether services are interstate or intrastate. Far from being a theme of section 254, this interstate/intrastate division only occurs at these few points in section 254 where there is a special need to address telecommunications this way.

Looked at individually and taken in the aggregate, the foregoing obligations Congress assigned to the FCC are formidable. Further, Congress emphasized the extreme urgency of these responsibilities by providing specific deadlines for action in subsection 254(a). The FCC assertedly technically complied with these deadlines, but only by abdicating the bulk of its statutory assignments.

The FCC decided that the mechanisms it would create and oversee would only compensate carriers for 25 percent of universal service costs under a plan applicable only to "interstate" service. Making no specific findings that this partial approach will assure attainment of statutory objectives, the Commission relies on hopeful anticipations that (i) the states will choose to carry out the task assigned by section 254, and/or that (ii) the operation of competitive markets will resolve the matter. In other words, the FCC reverses the judgment of Congress that the problem of ensuring universal service nationwide urgently requires an effective federal program that addresses the matter nationwide. By deciding to address only 25 percent of the problem, and putting off to the indefinite future its decision (if any) concerning the remaining 75 percent -- with no more justification than a vague statement that it would be "premature" to do otherwise, combined with a reference to comity and the states' expertise, and speculation that the states or

the marketplace may solve the problem[21] -- the FCC has in effect countermanded a thunderous congressional direction aimed right at the agency.

The FCC's action is tantamount to the following pronouncement: "Congress was wrong. The matter is not urgent at all. Most of the problem will go away if we just leave it alone. So we reverse Congress, address (badly) 25 percent of the problem, and put off any other action to the indefinite future." This smacks of agency defiance -- of the courts as well as Congress. With regard to the broad obligations assigned to the FCC under section 254, for reasons it does not begin to explain much less justify, the FCC arbitrarily and willfully decides to address only a small part of the problem identified by Congress as urgent and critically important to the nation. The FCC shuffled the papers within the specified deadlines of subsection 254(a), but it did so by not even attempting to address the bulk of the problem.

As recommended by GTE and many other parties, the FCC should have adopted a federal plan that would make federal benefits available only for the benefit of states that cooperate with the federal plan. This would come squarely within the statutory scheme under which the FCC in conjunction with the Joint Board is charged with effectuating specified principles that include assuring "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service"; the Commission is similarly empowered and directed by subsection 254(d) to create "specific, predictable, and sufficient mechanisms ... to preserve and advance universal service." But the *Universal Service Order*'s decision to address only a small part of the problem automatically precludes a federal plan that orchestrates the efforts of federal and state agencies, as Congress intended.

At the heart of the problem are requirements imposed by state agencies uniquely on ILECs that they must furnish prescribed levels of service in high cost areas at rates below cost. This discriminatory imposition of burdens is the consideration that makes the introduction of competition difficult because it places unfair and disproportionate obligations on the ILECs. Notwithstanding these complexities, the FCC decided it may choose to address only 25 percent of the problem, leaving the other 75 percent to the very states whose policies create the problem or to the operation of a competitive marketplace when there can

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[21] *See Universal Service Order*, ¶¶ 201-02, 269-72, 807-18, 831-34.

be no genuinely competitive marketplace with certain competitors (ILECs) placed under unfair and disproportionate obligations.

Given the agency's mis-definition of its assigned tasks at the outset, it is not surprising that the FCC's plan fails to carry out its assigned tasks. This profound failure to identify correctly the agency's statutory assignments has produced innumerable deficiencies and failures in the *Universal Service Order*, many of which are addressed in filed petitions asking for reconsideration. GTE respectfully urges the Commission to give a close and careful examination to the petitions of the parties enumerated supra and to revise its plan so as to carry out congressional directions.

II. THE RECORD SUPPORTS A REQUIREMENT THAT CARRIERS RECOVER THEIR UNIVERSAL SERVICE CONTRIBUTIONS IN THE FORM OF EXPLICIT END USER SURCHARGES.

Throughout this proceeding, ILECs have strongly supported reconsideration of the Commission's refusal to require the recovery of universal service funding contributions through end user surcharges on interstate retail telecommunications revenues.[22] They have demonstrated that explicit end user charges thoroughly comport with the competitive neutrality requirements of the Telecom Act and confirm that an end user charge will be easier to administer because carriers will not have to keep track of inter-carrier payments. A broad range of additional commenters likewise urge the Commission to require recovery of universal service funding contributions through end user surcharges on interstate end user telecommunications revenues.[23]

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[22] *See* Comments of Ameritech on Joint Board Recommendation, CC Doc. No. 96-45 at 30-31 (Dec. 19, 1996); Comments on the Universal Service Recommended Decision by BellSouth Corporation, CC Doc. No. 96-45 at 15-16 (Dec. 19, 1996); Comments of GTE, CC Doc. No. 96-45 at 36 (Dec. 19, 1996); NYNEX Comments of Joint Board Recommendation, CC Doc. No. 96-45 at 23-24 (Dec. 19, 1996); Comments of Pacific Telesis Group, CC Doc. No. 96-45 at 11-14 (Dec. 19, 1996); Comments of SBC Communications Inc. In Response To Public Notice Of November 18, 1996, CC Doc. No. 96-45 at 11-14 (Dec. 19, 1996); Response of U S West, Inc. to Recommended Decision, CC Doc. No. 96-45 at 45-47 (Dec. 19, 1996). *See also* Joint Reply Comments of Bell Atlantic and NYNEX, CC Doc. No. 96-45 at 2-3 (Jan. 10, 1997); Reply Comments of SBC Communications Inc. In Response To Public Notice Of November 18, 1996, CC Doc. No. 96-45 at 2-3, (Jan. 10, 1997); U S West Petition at 9-10.

[23] *See* AT&T Opposition to Petitions for Reconsideration, CC Doc. No. 96-45 at 14-17 (Aug. 18, 1997) ("AT&T Opposition"); Consolidated Comments of the Ad Hoc Telecommunications Users Committee on Petitions for Reconsideration, CC Doc. No. 96-45 at 6-10 (Aug. 18, 1997) ("Ad Hoc Comments"); Comments of the Telecommunications Resellers Association, CC Doc. No. 96-45 (Aug. 18, 1997) at 2-8 ("TRA Comments"); Time Warner Communications Holdings, Inc. Opposition to and Comments on

(Continued...)

For example, in the most recent round of filings, AT&T asserts that the Commission's current USF recovery mechanism does not comply with the directive of 47 U.S.C. § 254(b)(4) because "it inappropriately transfers the ILECs' USF obligation to other carriers and, most fundamentally, it has an acute discriminatory impact on carriers who enter the local service market through total service resale ("TSR") and who have no ability to deflect their USF obligation to wholesale customers through access charges."[24] In addition, AT&T correctly points out that a mandatory end user surcharge would address various concerns raised by parties earlier in this proceeding, including: (1) the question of whether the ILECs' USF assessments should be subject to price cap reductions through the normal operation of the X-factor, and (2) allegations by customers that a permissive pass-through of the USF support assessment constitutes an abrogation of fixed-price contracts between carriers and their customers.

Similarly, Time Warner supports end user surcharges because "assessing contributions as a surcharge may obviate the need for carriers to change their access rates as a result of fluctuations in their support obligations."[25] The Telecommunications Resellers Association concurs on the ground that "[i]dentifying the USF contribution as an explicit charge, imposed upon all end users in order to fund universal services to all consumers, will thus partially ameliorate the competitive impact of such a restricted contribution mechanism by educating end users that all retail service providers are compelled to collect and remit the end user's USF contribution."[26]

In contrast to the broad support for end user surcharges, only the Rural Telephone Coalition ("RTC") suggests that such surcharges are inappropriate. RTC contends that Section 254's "equitable contribution requirement" does not require passing equal shares of any contribution obligation to each customer but, instead, simply mandates that "all providers of telecommunications services make an

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(...Continued)
Petitions or Reconsideration and Clarification of Report and Order, CC Doc. No. 96-45 at 12-13 (Aug. 18, 1997) ("Time Warner Opposition").

24 AT&T Opposition at 14.

25 *See* Time Warner Opposition at 12-13

26 TRA Comments at 4.

'equitable and nondiscriminatory' contribution to the advancement of universal service."[27] RTC misses the critical point.

As explained in GTE's August 18, 1997 comments in this docket, the current Commission plan does not satisfy section 254's mandate that support be "explicit and sufficient" because it leaves carriers with little option but to recover their universal service contributions in the rates charged their customers for other services. The statute thus requires that the Commission obligate contributors to collect universal service funding through a surcharge based upon an end user's assessable revenues and clearly reflected on the end user's bill for service. Accordingly, the Commission should prescribe implementation of a universal service support mechanism in the nature of a mandatory, uniform end-user surcharge.

In this context, the Commission should as a minimum clarify its contribution recovery requirements as discussed herein and in paragraphs 378 and 379 of the Access Reform Order.[28] As currently worded, these provisions may be read to suggest that price cap LECs may recover their universal service contributions only through exogenous cost adjustments to their price cap indices, while non-price cap carriers may pass their universal service contributions to end users through surcharges. GTE submits that such a reading would turn the concept of competitively neutrality on its head; and notes that the Commission's use of the words "may" and "elect[]" in the relevant text suggests that the discriminatory result described above is not, in fact, mandated. Nevertheless, the Commission should take this opportunity to declare that all carriers will be treated equivalently with respect to their ability to utilize end user surcharges to recover universal service contributions.

III. TELHAWAII'S REQUEST FOR PREFERENTIAL TREATMENT IS UNWARRANTED.

The State of Hawaii's Department of Commerce and Consumer Affairs (the "DCCA") has filed comments in support of TelHawaii, Inc's "Petition for Clarification." In its comments, the DCCA argues that paragraph 308 of the *Universal Service Order* should "not apply to TelHawaii and similar cases in which

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[27] Opposition to Petitions of the Rural Telephone Coalition, CC Doc. No. 96-45 at 3 (Aug. 18, 1997) (citation omitted).

[28] *See Access Charge Reform,* CC Docket No. 96-262, FCC 97-158, ¶¶ 378-379 (rel. May 16, 1997) ("*Access Reform Order*"); *Universal Service Order,* ¶¶ 853-55.

an exchange acquisition is ordered by a state public utilities commission because the existing carrier is providing inadequate service."[29] GTE has previously explained -- in its response to TelHawaii's Petition for Clarification -- why the Commission should not "clarify" the *Universal Service Order* in this way. First, the Common Carrier Bureau recently specifically declined to take a position on the applicability of paragraph 308 to the situation in Hawaii -- and the Bureau, unlike the Commission in this proceeding, had before it a complete record.[30] Second, paragraph 308 clearly does apply to the situation in Hawaii, because the Hawaii PUC placed excessive reliance on the availability of USF funding in selecting TelHawaii over GTE Hawaiian Tel as carrier of last resort ("COLR") for the Ka'u district of Hawaii.

Like TelHawaii, the DCCA neither acknowledges the fact that the Common Carrier Bureau has expressly declined to resolve the applicability of paragraph 308 at this time, nor provides any reason for this Commission to reverse course and resolve it now. GTE, by contrast, submits that it is obvious why the Commission should not decide the question in this proceeding. In order to decide whether paragraph 308 applies "to TelHawaii and similar cases in which an exchange acquisition is ordered by a state public utilities commission because the existing carrier is providing inadequate service," this Commission would first have to determine whether it is true, as TelHawaii and the DCCA maintain, that the Hawaii PUC selected TelHawaii as COLR for Ka'u on the grounds that GTE Hawaiian Tel was "providing inadequate service," or whether, instead, the Hawaii PUC made its selection based on the availability of USF funding. As GTE demonstrates herein, the latter explanation is the correct one, and paragraph 308 is therefore fully applicable. In any event, however, a careful and proper determination as to the basis of the Hawaii PUC's selection of TelHawaii can only be made in the context of the entire record in several dockets before that agency, and that record is not before this Commission.

Indeed, in July of this year, the Common Carrier Bureau declined to rule on the applicability of paragraph 308 to the TelHawaii transaction at present, notwithstanding that the Bureau had before it a more extensive record than presented here. Neither TelHawaii nor the DCCA has presented any grounds

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[29] Comments of the State of Hawaii, CC Doc. No. 96-45 at 4 (Aug. 18, 1997) ("DCCA Comments").

[30] Petition for Waivers Filed by TelAlaska, Inc. and TelHawaii, Memorandum Opinion and Order, 1997 FCC Lexis 3745 (rel. July 16, 1997).

for upholding TelHawaii's collateral attack on that ruling in this proceeding.

Nonetheless, if this Commission chooses to resolve the question now, it should rule that paragraph 308 does apply to the situation in Hawaii because it could not be clearer that the availability of USF funding played the predominant role in the Hawaii PUC's selection of TelHawaii. In Decision and Order ("D&O") No. 14415, the Hawaii PUC invited telecommunications providers to submit proposals to serve Ka'u. In authorizing the bidding process, the Hawaii PUC noted that under the then-existing federal USF rules, GTE Hawaiian Tel "does not qualify for federal low cost loans or national universal service funding" and must rely on general ratepayer charges or "a subsidy from the State's universal service fund" to cover the costs of converting to single-line service.[31] The Hawaii PUC then stated:

> Among the factors to be considered in authorizing an alternative telecommunications provider to serve the rural areas of the State is whether an alternative provider will be able to provide the same or better service at a competitive or lower cost than GTE Hawaiian Tel.
>
> Intervenor TelAlaska [TelHawaii's parent corporation], an Alaska corporation providing single line service to rural communities in the state of Alaska, maintains that it will be able to provide better service to the rural areas of the State at a lower cost than GTE Hawaiian Tel. TelAlaska currently provides single line service to areas in Alaska that are even more remote than the Ka'u area on the island of Hawaii, and that have even fewer subscribers. TelAlaska is able to provide this service because it has access to national universal service funds and low cost loans that significantly lower the cost to the consumer of local exchange telephone service.
>
> . . . .
>
> It is clear from this evidence that a telecommunications provider that has access to funding from the national universal service fund and for low cost loans should be able to provide the same or better service to customers in the rural areas of this State at a lower cost than GTE Hawaiian Tel.[32]

Significantly, the Hawaii PUC in D&O No.14415 expressly rejected TelHawaii's argument that GTE Hawaiian Tel should not be allowed to participate in the bid process.[33] The Hawaii PUC stated that it would "not bar GTE Hawaiian Tel from submitting a proposal to provide service in the Ka'u area, if it so desires. For while we have concluded that service in the rural areas is less than adequate, *it is, as yet, uncertain as to whether any other provider will be able to meet the telecommunications needs of rural customers at a*

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31 GTE Hawaiian Telephone Co. Inc., Order to Show Cause, Decision and Order No. 14415 at 7 (Dec. 13, 1995).

32 *Id.* at 8-9.

33 *Id.* at 18-19.

lower cost or competitive price as GTE Hawaiian Tel."[34] The clear import of this statement by the Hawaii PUC is that if a carrier such as TelHawaii could not "meet the telecommunications needs of rural customers at a lower cost or competitive price as GTE Hawaiian Tel," then GTE Hawaiian Tel would be allowed to remain as the incumbent in Ka'u. And, because the Hawaii PUC had specifically identified "access to funding from the national universal service fund" as the mechanism that could allow a carrier to provide service at lower cost than GTE Hawaiian Tel, the further implication of D&O No. 14415 is that if a would-be competitor could not obtain such USF funding, then GTE Hawaiian Tel likewise would remain as incumbent for Ka'u. Thus, it is clear beyond doubt that the Hawaii PUC, in inviting bids to serve Ka'u, identified eligibility for USF funding as the major, if not the dispositive, selection criterion.

Given the Hawaii PUC's clear reliance on TelHawaii's promises of federal USF funding, it was not surprising that, in D&O No. 14789, the Hawaii PUC chose TelHawaii (a carrier which had boasted of its eligibility for federal USF money) over GTE Hawaiian Tel (which under then-prevailing USF rules was ineligible for USF funding) as COLR for Ka'u. And, as if to erase all doubt that the choice of TelHawaii over GTE Hawaiian Tel in the bid process was based on the former's presumed superior access to federal USF funding, D&O No. 14789 expressly conditioned the Hawaii PUC's selection of TelHawaii on TelHawaii's prompt pursuit and receipt of federal USF funding:

> Within 30 days from the date of this order, TelHawaii shall file requests with the Federal Communications Commission for a study area waiver, waiving the two year delay for receiving federal universal service funds. *The commission reserves the right to revisit the selection of TelHawaii as the alternative provider of telecommunications service in the Ka'u area if it fails to obtain federal universal service funds within 10 months of this order.*[35]

Although the DCCA suggests that the Commission should decide that paragraph 308 does not apply to TelHawaii based on the alleged grounds that this is a case "in which an exchange acquisition (has been) ordered by a state public utilities commission because the existing carrier is providing inadequate service," this is not in fact the case. The DCCA, like TelHawaii, simply fails to come to terms with the actual

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[34] *Id.* at 18-19 (emphasis added).

[35] GTE Hawaiian Telephone Co. Inc., Order to Show Cause, Decision and Order No. 14789, ¶ 6 (Jul. 15, 1996 (emphasis added).

language of the Hawaii PUC's orders. Instead, without bothering to support its version of events with quotations from any of the Hawaii PUC's orders, the DCCA bootstraps TelHawaii's own claim that it was selected to serve Ka'u over GTE Hawaiian Tel because GTE Hawaiian Tel was "endanger[ing] the life and property of residents "[36] in Ka'u. This is simply untrue.

The PUC's finding that multi-party service no longer met its definition of "adequate service" in Hawaii PUC Docket No. 7497 did not result in the elimination of GTE Hawaiian Tel as a provider in Ka'u. To the contrary, concurrent with that finding above, the PUC ordered GTE Hawaiian Tel develop a three-year plan for providing single line service to the area, a plan which the PUC approved and which is now near completion. The Hawaii PUC did subsequently determine in Docket No. 94-0346 that it would entertain bids from alternative providers to determine whether the same or better quality service than that provided by GTE Hawaiian Tel could be provided at a lower cost, but it *explicitly* invited GTE Hawaiian Tel to be a bidder in that process. After considering both TelHawaii's and GTE Hawaiian Tel's bids for the COLR designation in Ka'u, the Hawaii PUC *explicitly* made its selection of TelHawaii based on TelHawaii's supposed superior access to USF funding (which, as GTE maintains, would make paragraph 308 fully applicable). D&O No. 14789, in which TelHawaii's bid to serve Ka'u was approved and GTE Hawaiian Tel's was denied, says not one word about GTE Hawaiian Tel endanger[ing] lives.

The simple fact is that when, after having extolled the cost advantages of USF-eligible carriers in D&O No. 14415, the Hawaii PUC was confronted with competing bids to serve Ka'u -- one from USF-eligible TelHawaii and the other from the USF-ineligible incumbent, GTE Hawaiian Tel -- it selected the former, and threatened to revoke that selection if TelHawaii could not, in fact, secure the promised USF funding. TelHawaii has unabashedly engaged in precisely the sort of gaming of the USF system that paragraph 308 is designed to prevent, and there is no reason why this Commission should allow such distortion of the system in this case simply because a state commission is involved.

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[36] DCCA Comments at 2; *cf.* Petition for Clarification by TelHawaii, Inc., CC Doc. No. 96-45 at 3 (Jul. 17, 1997).

IV. THE COMMISSION SHOULD ADOPT COMPETITIVE BIDDING AS A MECHANISM FOR MAKING UNIVERSAL SERVICE FUNDING DETERMINATIONS

AT&T argues that the Commission should "abandon continued examination of competitive bidding as a means of selecting an eligible carrier given the lack of significant support for [the] approach."[37] In previous comments in the universal service proceeding, AT&T has further contended that a competitive bidding system would be a barrier to entry and difficult to administer.[38] GTE disagrees.

Contrary to AT&T allegations, a properly structured bidding system would act as a check on the overall size of the universal service fund and help promote efficiency both in administration and in the delivery of support. Indeed, the benefits of competitive bidding have been noted by both the Commission and the Joint Board. For example, the Commission has noted that one of the many advantages of competitive bidding is that "a properly structured competitive bidding system [would be able] to reduce the amount of overall support needed."[39] As further explained by the Joint Board, a competitive bidding system "could have significant advantages" over other mechanisms used to determine the level of universal service support.[40]

Additionally, the Rural Telephone Coalition ("RTC") expresses concerns about the use of the competitive bidding process in its Petition for Reconsideration.[41] RTC questions, in part, the usefulness and legal basis for the use of auctions to decide what carriers are eligible for federal support. However, the major focus of its concern centers on the question of proper implementation.[42] RTC cautions the Commission that choosing eligible carriers through competitive bidding may work better in theory than in practice. It references the Commission's experience in the broadband PCS and wireless communications services auctions, claiming that recent problems are a "warning that the theoretical results predicted by

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37 AT&T Opposition at 20.

38 Reply Comments of AT&T Corp., CC Doc. No. 96-45 at 8-10 (Jan. 10, 1997).

39 *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 87, 266 (1996) (Recommended Decision).

40 *Id.* at 265.

41 RTC Petition at 23-24.

42 *Id.*

auction proponents may fall short of reality."[43] It also questions whether auctions will result in support that is "sufficient."

The benefits of a competitive bidding system can be secured without compromising the interests of RTC and its members. Essentially, RTC is skeptical of the bidding process and believes that the Commission may not be prepared to conduct such auctions properly. However, the Commission will have ample evidence of how properly to implement competitive bidding processes as part of universal service from the examples of the Pennsylvania PUC, the California PUC, Chile and Peru.[44]

The gains in productivity and efficiency resulting from the use of competitive bidding mechanisms will provide significant cost savings for universal service.[45] Therefore, GTE urges the Commission actively to explore the possibility of using competitive bidding in the universal service context.

V. CLARIFICATION OF THE DEFINITION OF UNIVERSAL SERVICE IS CRITICALLY IMPORTANT TO INSTITUTING A COMPETITIVE BIDDING SYSTEM

The United States Telephone Association ("USTA") asks the Commission to clarify that a carrier is not eligible for universal service support unless it "offer[s] the defined universal service package on a stand alone basis at the affordable rate established by the state . . . [or] offer[s] the universal services combined with other features, so long as a package which includes the universal service definition is offered at the affordable rate."[46] Unless the Commission clarifies that this is a correct reading of its requirements, USTA argues, certain providers would be able to "cherry-pick" high volume, high revenue customers and, thus, undermine the principles of the universal service system.

The Ad Hoc Telecommunications Users Committee ("Ad Hoc") opposes USTA's petition, contending that it "fl[ies] in the face of competitive neutrality, by unreasonably hindering competitors from leveraging their existing market strengths to begin to overcome the ILEC's enormous incumbency

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43 *Id.*

44 *Universal Service Order*, ¶ 320 & n.808.

45 *See id.*, ¶ 320.

46 United States Telephone Association Petition for Reconsideration and/or Clarification, CC Docket No. 96-45 at 15 (Jul. 17, 1997) ("USTA Petition").

advantages in the local exchange market."[47] Ad Hoc further argues that USTA's position conflicts with the Commission's finding that Section 214(e) of the Telecommunications Act contains the only criteria for universal service support eligibility, and that additional criteria are unnecessary.[48] However, it is Ad Hoc's support for universal service tying arrangements that violates both the letter and spirit of the Act's universal service provisions.

Initially, if "eligible" carriers are permitted to bundle expensive services like toll, video or custom calling with universal services at additional cost, it will be impossible for the Commission to ensure that universal service funds benefit consumers in the way Congress intended and section 254 requires.[49] The packaging of services included in the definition of universal service with an array of other services without pricing limitations will frustrate any attempt to determine whether support is subsidizing the appropriate service offerings. Moreover, utilizing the state-established affordable price to define the "universal service" an eligible carrier must provide is no more an expansion of section 214(e)'s eligibility criteria than the application of state service quality requirements, which the FCC has expressly authorized.[50] It is Ad Hoc that seeks to rewrite the statute to authorize universal service eligibility for an entity that ties its offering of universal services to a customer's subscription to additional, expensive offerings included in its service "package."[51] Such a modification of the Act's eligibility criteria would clearly be contrary to both the statute and the public interest.

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47 Ad Hoc Comments at 3.

48 *Id.* at 3-4.

49 Carriers that receive universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

50 *Universal Service Order*, ¶¶ 100-01.

51 Local service providers should be able to add functionality to the basic supported service package as long as the price of the offering is constrained to the affordable level. This would also include additional integral capability associated with the underlying technology used to provide the service. For example, mobility is an integral component of offerings from CMRS providers.

Ensuring that the definition of universal service prohibits the conduct supported by Ad Hoc is particularly important to the employment of competitive bidding as a means to make universal service support determinations – which GTE advocates.[52] In order for competitive bidding to work properly, the Commission must ensure that each participant premises its bid on an economically consistent universal service offering. If some carriers are permitted to package the provision of universal service with additional expensive features and, thereby, subsidize those features, while others offer universal service on a stand-alone, price-limited basis, the system will not produce equitable or efficient results. Such a result violates competitive neutrality and will undermine universal service goals.

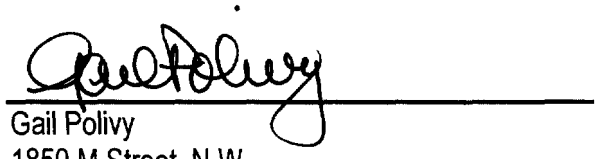
52 *See supra* Section IV.

VI. CONCLUSION

The Commission should take action consistent with these reply comments in order to establish universal service support mechanisms that will ensure the delivery of affordable telecommunications service in compliance with the Telecommunications Act.

Respectfully submitted,

GTE SERVICE CORPORATION
and its affiliated domestic telephone operating, wireless, and long distance companies.



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I hereby certify that on this 3rd day of September, 1997, I caused copies of the foregoing Reply Comments on Petitions for Reconsideration in CC Docket No. 96-45 to be mailed via first-class postage prepaid mail to the following:

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